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*In the Supreme Court of Iowa, December Term, 1859.—In Equity.*

LUNSFORD L. LORING vs. CHARLES W. PAIRO, WILLIAM NOURSE AND  
SAMUEL C. EDES.

1. A general assignment for the benefit of creditors, with preferences among the creditors, made by insolvent debtors not residents of this State, at their places of residence, and conveying land situated in this State, is void as respects such land, under section 977 of the Code of Iowa, which provides that "no general assignment of property by an insolvent or in contemplation of insolvency, for the benefit of creditors, shall be valid, unless it be made for the benefit of all his creditors, in proportion to the amount of their respective claims;" notwithstanding that such assignment may be valid by the law of the place where it was made.
2. The validity of a conveyance of real estate must be determined by the *lex loci rei sitæ*.
3. The judgment of a court of general jurisdiction must be presumed to be valid, until the contrary is shown.
4. In a bill in equity by a judgment creditor to set aside a conveyance of property by the judgment debtor, as void, and to subject such property to execution on the judgment, it is not necessary to be shown that the complainant has issued an execution on his judgment, and had it returned *nulla bona*.
5. The rule of equity, that partnership creditors shall have a preference as to partnership property, and separate creditors as to separate property, has no application to a suit in equity by a judgment creditor of the firm, against the judgment debtors, and their assignee, to set aside as void an assignment of property belonging to one of the partners, and to establish the lien of the complainant's judgment thereon.

This was a bill in equity, brought by the complainant, as a judgment creditor of the defendants, Pairo and Nourse, to set aside a general assignment for the benefit of creditors, with preferences, and a deed auxiliary thereto, made by Pairo and Nourse to the defendant Edes, so far as said deeds purported to convey certain lands in Muscatine County, Iowa. The District Court of Muscatine County rendered a decree in favor of complainant, from which respondents appeal.

The facts are sufficiently stated in the opinion.

*Richmond and Bro.*, for appellants.

*Gurley and Rogers*, for appellee.

WRIGHT, CH. J.—Pairo and Nourse were bankers in Washington city. The bill charges that on the 14th of September, 1857, they were insolvent, and being so, they executed to their co-respondent Edes a deed of general assignment of their property, real and personal, for the benefit of their creditors. It is also averred that Pairo, one of the co-partners, on the same day, being the owner in fee simple of certain lands in Muscatine county, in this State, conveyed the same to said Edes, in trust for the partnership creditors; that both of said deeds were executed on the same day, and in pursuance of the same plan and design, to wit, to convey all their property, of whatever nature and wherever situate, to secure their creditors; that the deed of Pairo was in aid of the one made by the partnership, and for the purpose of more specifically conveying, by a particular description, the said land.

Complainant avers that on the same day he deposited with Pairo and Nourse near \$2,400, for which he received a certificate of deposit; that on the 7th of October, 1857, he procured an attachment against them from the Muscatine District Court; that the same was levied upon the land conveyed by Pairo to Edes, and that such proceedings were afterwards had, that on the 19th of October, 1858, he recovered a judgment against the said Pairo and Nourse, for the amount of his said debt, with interest. It is then alleged that said two deeds, so far as they purport to convey the title to said land in Muscatine county, are null and void; that the attachment and judgment are liens upon said land, and that said deeds are a cloud upon the title, and an obstruction and hindrance in the way of enforcing said liens. This cloud he seeks to have removed, and that said deeds as to said lands may be set aside.

The answers admit the execution of the deeds, but deny the insolvency, stating that “they were unable to meet their engagements, but always considered that the property conveyed, if judiciously disposed of, would not only pay all their debts, but leave a large surplus.” They admit the issuing of the certificate of deposit; state that they, as well as said plaintiff, are non-residents of this State; admit the issuing of the attachment charged; deny, upon information and belief, that complainant obtained a judgment,

but refer to said proceedings for greater certainty; insist that said deeds are not null and void, and deny the complainant's lien.

Copies of the deeds referred to are annexed to the bill, and from them it appears that they were executed in the District of Columbia, and were intended to convey all the estate, personal and real, of said firm and each member thereof, to be applied to the satisfaction of all their and each of their debts. The first deed describes certain real estate, and then conveys "also all other lands, &c., owned by them or either of them, in the several States and Territories following," (naming several States, including Iowa.) It also recites that Pairo holds in his own name, divers lands, *but that the same belong to the firm.*

The second deed directs the trustee to apply the proceeds of said lands, first to the payment of certain debts which are named, (and some of them being the same as named in the first,) and the remainder unto and among all the other creditors of Pairo & Nourse equally, according to the amount of their respective debts.

Upon these facts, and others to be hereafter stated, complainant insists that these deeds are invalid, and that the lands attached are subject to his judgment; while respondents insist that the decree was unwarranted, and should be reversed. Their respective positions we proceed briefly to notice.

We think it very evident that these deeds constitute but one transaction, but one general assignment. The second is but in aid of the first, the design manifestly being to carry out the plan and object expressed in the principal instrument. And this conclusion is not only justified by the entire tenor of the two instruments, but by the consideration that the bill charges these facts, and the answer does not pretend to deny them. On the contrary, the answer seems to treat them as parts of one entire transaction, and to assume it as true, that if one falls, the other must. And that this is correct, we entertain no doubt.

That this assignment, upon its face, is general, and *made so as to prefer certain creditors*, is admitted. And while respondents concede, that under the laws of this State such an assignment is not valid, yet it is contended that it is valid by the law of the place where made, and is therefore valid here.

Whatever may be the rule as to such conveyances, when they relate alone to personal property, we think it is well settled that when they operate upon real estate, they must be judged of by the law of the place where the real estate is situated. As transfers of real estate, their validity must be determined by the *lex loci rei sitæ*. All the authorities, both in England and this country, it is believed, recognize this principle. (Story's Confl. of Laws, §§ 427, 428, 423, a, and cases cited in note 3, to § 428.)

Our law provides that no general assignment of property by an insolvent or in contemplation of insolvency, for the benefit of creditors, *shall be valid*, unless made for the benefit of all the creditors, in proportion to the amount of their respective debts. (Code, § 977, *Burrows vs. Lehndorf*, June Term, 1859.) Testing the assignment in this case by the rule of the code, it is invalid. Whether it is invalid for all purposes and every where, we need not determine. The laws of the District of Columbia have no extra-territorial force except by consent or comity. If the assignment was valid as to all or any portion of the estate there, this State has adopted a different rule, and by this we are to be governed. And being invalid, it could not operate to pass the estate as against the creditor. The preference to creditors renders it void; and the courts will not undertake to strike out this part, and uphold the conveyance as one for the benefit of all the creditors in proportion to the amount of their respective claims. If the assignment is valid, as claimed, when executed, then it would follow that it might be enforced *there*, so as to give the proposed preference; while *here*, (if the instrument is to be sustained in part,) the same preference would be denied. And then if the clause giving the preference can be disregarded, and the assignment be sustained in this instance, so it may in every other case of a like character, whether made within or without the State, and the statute referred to would be without force or meaning.

Respondents insist, however, that there is nothing to show that the assignors were insolvent. Whether so in fact, in the sense that their property was insufficient to pay their debts, we think it most manifest from the assignment, that it was at least made *in contemplation of insolvency*. If so, the rule is the same as if there was actual insolvency.

But it is insisted that complainant has no judgment upon which he could ask an execution, and therefore had no right to seek to remove the cloud from the title to this land. The argument is, that Pairo and Nourse were non-residents; that the court had no jurisdiction except over the property attached, that the complainant could as a consequence recover no more than a judgment against that property, and therefore he cannot now ask execution as upon a general judgment. The argument is based, if not upon a mistake of law, at least upon one of fact. Though defendants were not residents of the State, it by no means follows that they may not have appeared to the action, submitted to the jurisdiction, and thus have conferred upon the court power to render a general judgment. The bill charges that such proceedings were had, so that complainant *recovered judgment* against said Pairo and Nourse, and this is nowhere positively denied.

If a judgment was recovered, we must presume, in the absence of proof to the contrary, that it was a valid judgment. Thus viewing the case, we need not stop to inquire whether the legal proposition asserted by respondents, upon the supposition that there was no appearance to the attachment proceedings, is correct or not.

It is further insisted, that before complainant could proceed in equity to subject the lands, he should have had an execution returned *nulla bona*; in other words, he should show that he had exhausted his legal remedy, before going into equity. To this we think complainant well answers; that this is not a creditor's bill to reach equitable assets upon which the judgment is not a lien, but to remove out of the way of an execution a pretended conveyance, which is alleged to be void.

To the latter, it is not necessary for the party to exhaust his legal remedies in his effort to obtain satisfaction of his judgment. *Beck vs. Burdett*, 1 Paige, 305, and cases there cited.

It is further insisted, that the lands attached belonged to Pairo; that by the second deed these lands were devoted first to the payment of his individual debts; that complainant is a creditor of the firm, and therefore has no right to seek to subject the property of the individual member to his debt.

Whatever application the rule insisted upon and thus briefly stated might have, if the bill was filed for the purpose of marshaling assets, or if this was a contest between the creditors of the firm and of either member of the same, it has no place in a case of this character. We do not know that there are any creditors of Pairo. If there are any, it will be time enough to determine their rights as against the complainant when they shall assert them. In a proceeding of this nature, the rule which gives the separate creditors of any one of a firm, preference over the partnership creditors, in the application of the separate estate, has no application whatever. *Scudder vs. Delushmutt*, June Term, 1859. Not only so, but the deeds in this instance show that though the title to this land was in Pairo, it in fact belonged to the firm, he holding the fee simple title, but in trust for the partnership. Such being the case, all possible difficulty upon the point suggested is removed.

The decree below will stand affirmed.

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#### NOTICES OF NEW BOOKS.

A TREATISE ON THE AMERICAN LAW OF LANDLORD AND TENANT, embracing the Statutory Provisions and Judicial Decisions of the several United States in reference thereto: With a selection of Precedents. By JOHN N. TAYLOR. Third edition, revised and enlarged, 8vo. Boston: Little, Brown & Co. 1860.

As almost every individual in the community is either a landlord or a tenant, it follows, of course, that the profession is constantly consulted upon questions arising out of these relations. The work of Mr Taylor has been long and favorably known to the bar, as a useful guide in this department of the law. Kent, in his Commentaries, speaks of it as "a learned and valuable treatise on this subject." The present is the third edition, and, besides being carefully revised and corrected, contains many additions to the text and to the citation of authorities, with further notes upon numerous points. It seems to embrace most of the important decisions which have appeared since the preceding edition. We have found, by experience, that the practitioner requires to have at hand not only the learned English treatises of Woodfall, Chambers, Comyn, and Platt, but that some manual of the numerous principles, statutory provisions, and decisions of our own States is quite indispensable. We are persuaded that the work of Mr. Taylor will be found of much more practical value